

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4309 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

4 =====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
CHAMPA ENGINEERING INDS

Versus

SURAT SINGH

-----  
Appearance:

MR MB GANDHI for Petitioners

MR AMIT J SHAH for Respondent No. 1

-----  
CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 29/10/96

ORAL JUDGEMENT

1. Shri Jitendra H. Gandhi- accused in Criminal Case No.168 of 1991 on the file of learned Chief Judicial Magistrate, Ahmedabad has filed the present petition under Section 482 of Code of Criminal Procedure. By this petition he wants this court to quash the said Criminal Case against him by contending that the said Criminal Case ought to be quashed by discharging him in view of the directions issued by the Appex Court in the case of

"Common Cause" A Registered Society through its Director v. Union of India and Ors.,1996 (4) Supreme To-Day 37.

2. The Deputy Chief Controller of Imports and Exports, Ahmedabad has filed a complaint against the present petitioners in the court of Chief Judicial Magistrate, Ahmedabad alleging that the present petitioners have committed an offence punishable under Section 5 of the Imports and Exports (Control) Act,1947. The said complaint was filed on 20-1-1989. It is an admitted fact that in the said case the recording of evidence before charge has taken only on 25-9-1996. It is the claim of the respondent that the recording of the evidence before charge was delayed on account of the petitioners seeking adjournment and the witnesses had to go back on 3 occasions prior to that date. Though the said claim is disputed by the learned advocate for the petitioners, it is not necessary for me to go into controversy for the purpose of deciding the petition before me. As the facts stand today, the actual recording of evidence in this case before charge has taken on 25-9-1996. The decision of the Appex Court in the case of "Common Cause " A Registered Society through its Director v. Union of India & Ors.,1996 (4) Supreme Today has taken place on 1-5-1996. In the said case, the Supreme Court has given certain directions with a view to reduce the pendency of the criminal cases in trial courts. The said directions and judgment are delivered by the Supreme Court and in view of the provisions of Article 142 of the Constitution of India, the said directions are binding not only against all the trial courts, but also against this court. In para 1 and 2 of the said judgment, various directions are given by the Appex Court for disposal of the cases on the files of the trial courts. Thereafter, in para 4 of the said judgment, it has been directed as under :

Directions (1) and (2) made hereinabove shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against

public tranquility ; (g) offences relating to public servants, (h) offences relating to coins and Government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice (k) any other type of offences against the State (l) offences under the Taxing enactments and (m) offences of defamation as defined in Section 499 I.P.C. "

From the above directions in para 4, it would be quite clear that the directions given by the Appex Court in para 1 and 2 of the said judgment shall not be applicable to the cases pending for the offences mentioned in the said para No.4. In the said para No.4 it has been mentioned that the said directions are not applicable to an "economic offence." Therefore, it is necessary for me to consider and decide as to whether the offence alleged against the present petitioner is an economic offence or not.

3. If the directions given by the Appex Court in para No.4 which are quoted by me above are read carefully, then it would be quite clear that the Appex Court wants to exclude the applications of the directions given in para No.1 and 2 of the said judgment to those offences which are the offences against the society at large. The offences which are offences against the public good, public tranquility and public health are to be exempted from the applications of the directions given in para No.1 and 2 of the said judgment. If this intention of Their Lordship of Appex Court is taken into consideration by considering para No.4 of the said judgment, then there will be no difficulty in holding that the offence in question is an economic offence as contemplated by the Appex Court. It must be remembered that the Imports and Exports (Control) Act, 1947 is an act to prohibit or control imports and exports. It is an act enacted to strengthen the economy of the country. The offences contemplated by the said act of 1947 are the offences against the society at large. It is the offence against the economy of the country. His Lordship K.T.Desai, J of the Bombay High Court in the case of M/s.Pioneer Scrap Traders and Exporters v. Eapen and another, A.I.R. 1963 BOMBAY, 50 (V. 50 C 13) has considered the object of the Imports and Exports (Control) Act, 1947 by making the following observations.

The purpose and object of the Act obviously as appears from all the above provisions including the preamble to the Act is

necessarily for general and public interest. Control that was intended to be imposed was not to be arbitrary and was not to relate to any purpose other than the control of exports so far as exports are concerned. I assume that the control of exports was deemed necessary for the purpose of protection of economy in this country. It must be that goods which are required for consumption in India may not be allowed to be exported. It may be that the goods by export whereof foreign exchange could be earned may be allowed to be exported in such a way as appropriate foreign exchange can be earned by this country. These and similar objects, I imagine, must be the object and purpose of the export control as provided in the above Act and the Order.

The observations of His Lordship support my view that offence under the Imports and Exports ( Control ) Act, 1947 is an economic offence.

4. After the enactment of Code of Criminal Procedure, 1973, the Parliament has enacted the Economic Offences ( Inapplicability ) Act, 1974. By the said enactment the legislature has excluded the applications of the provisions of Chapter 36 of Criminal Procedure Code, 1973 to certain acts. The Chapter 36 of the Code of Criminal Procedure, 1973 for the first time provided the period of limitation for taking cognizance of criminal offences and the legislature has thought it fit that those provisions of limitation should not be made applicable to the economic offences and the offences which are against the society at large and the offences which are against the public good and public health. Sub Section 2 of the said Section provides that the provisions of Chapter 36 of Code of Criminal Procedure, 1973 not to apply to certain economic offences and the said Act provides a schedule in which the various enactments are mentioned to which the provisions of Chapter 36 of the Code of Criminal Procedure are not applicable. In the said list the Act in question i.e. Imports and Exports (Control) Act, 1947 is at serial No.11. Thus, by this enactment of the Act No.12 of 1974 the legislature has declared the Act in question as an Act pertaining to economic offences. Therefore, that enactment also gives support to my view that the offence in question is an economic offence.

5. Thus, I hold that the offence which is alleged against the present petitioners is an economic offence

and consequently it is covered by para No.4 of the judgment of the Appex Court in the case of " Common Cause" A Registered Society through its Director v. Union of India ( Supra ) and consequently the directions given in para 1 and 2 of the said judgment are not applicable to the case in question. I, therefore, hold that the present petition will have to be rejected. I, therefore, reject the same. Rule is discharged.

\* \* \* \*